

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re ANGELA M., et al., Persons
Coming Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

RAFAEL M.,

Defendant and Appellant.

B284864
(Los Angeles County
Super. Ct. No. DK20078)

APPEAL from orders of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal, and Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Rafael M. appeals from the juvenile court's jurisdiction finding under Welfare and Institutions Code section 300, subdivisions (a), (b), (d), and (j),¹ and disposition order removing his children, Angela M. and Alexander M., from his custody. Rafael M. argues that substantial evidence does not support the juvenile court's jurisdiction finding and that the court therefore did not have jurisdiction to make the disposition order. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Investigation, Petition, and Detention*

On October 3, 2016 the Los Angeles County Department of Children and Family Services received a referral stating Rafael sexually abused his seven-year-old daughter Angela. Angela told her mother, Elsa H., that Rafael had kissed her vagina. Elsa first learned about the sexual abuse in July 2016, when Elsa was giving Angela a shower and Angela pointed to her vagina, demonstrated how Rafael had touched her, and said, "Papa touched me really hard." Elsa determined the abuse had occurred approximately one year prior. Elsa called the police, and Angela, by pointing and touching her vagina with her index finger, confirmed to the officers where Rafael touched her.

On October 4, 2016 police officers, after receiving a call to investigate another incident of sexual abuse involving Angela, went to Angela's elementary school to interview her. Angela told the officers that approximately two years prior, when she was in

¹ Statutory references are to the Welfare and Institutions Code.

the shower, Rafael entered the bathroom, locked the door, and began to kiss her vaginal area. Angela also told the officers that on another occasion, when she was in bed, Rafael entered the bedroom, locked the door, and began kissing her vagina. Angela indicated the oral copulation occurred at least three different times. The officers wrote in their investigative report that Angela “knew the difference between right and wrong and yes and no.”

When the Department’s social worker interviewed Angela later that day, Angela said Rafael “poked her ass,” and she demonstrated how he did it by moving her index finger “in and out.” Angela’s six-year-old brother Alexander told the Department’s social worker that he was able to look under Rafael’s bedroom door and see Rafael touching Angela “in her private parts.” Alexander also reported that Rafael pulled his ears when he was in trouble and locked him in the bathroom.

Elsa told the Department social worker that Angela exhibited “strange sexual behavior” with Alexander, such as “grinding on [her] brother” and “getting on top of her brother.” Angela’s grandmother reported that, on the same night in July 2016 when Elsa learned Rafael had sexually abused Angela, Angela told the grandmother that Rafael “touched her on her vagina and on her butt.” Angela’s uncle, Daniel L., told the Department social worker he noticed Angela demonstrating “sexual behavior.” In one incident Daniel witnessed, Angela got out of the shower naked, and Alexander started “blowing air at her vagina.”

The Department also learned a psychologist had diagnosed Angela with intellectual disability, language delay, and Post Traumatic Stress Disorder (PTSD) “likely secondary to the reports of trauma exposure.” The psychologist based her diagnosis of PTSD on observing Angela’s behavior, reports

Angela had witnessed Rafael physically and verbally abusing Elsa before their separation, and reports Rafael had exposed Angela to pornography.

The Department submitted a report to the juvenile court summarizing its investigation and filed a petition alleging Angela and Alexander came within the jurisdiction of the juvenile court under section 300, subdivisions (a), (b), (d), and (j). The juvenile court detained both children from Rafael. Because Rafael no longer lived with Angela and Alexander after Elsa and Rafael separated in August 2015, the court allowed the children to remain at home with Elsa.

B. *Jurisdiction and Disposition*

For the jurisdiction and disposition hearing, the Department submitted a report summarizing the findings in its detention report. The Department also submitted a January 30, 2017 Last Minute Information summarizing the forensic interviews of Angela and Alexander. In her interview, Angela stated “Papa touch me booms or my butt.”² In his interview, Alexander stated that, on one occasion when Rafael locked him in the bathroom with the lights off, he “peeked under the door” and saw Rafael and Angela naked in the bedroom. Alexander said he saw Rafael “touch [Angela] in her private part, and then . . . kiss her in her private part.” Alexander also stated that he saw “shadows” of Rafael’s body “going like up and down” on top of Angela and that Rafael’s private part was “inside [Angela’s] private part.”

² According to the Department, Angela used the word “booms” “consistently throughout the interview when she pointed to her groin area.”

At the hearing, Rafael called his sister-in-law to testify the bedroom floor in the house where Alexander said he had witnessed the sexual abuse had thick carpeting. From this testimony, counsel for Rafael argued it was impossible for Alexander to have seen the sexual abuse he claimed he saw under the door. Counsel for Rafael also objected to the admission of “any statements” by Angela in the reports and asked the court to excise Angela’s statements from the detention report, the jurisdiction report, and the Last Minute Information because the Department had “not qualified her as a witness.” Counsel for Rafael argued that Angela “operates at approximately a three-year-old basis in terms of being able to communicate, ability to think” and that Angela made her statements in response to “loaded” questions. The juvenile court stated, “Noted. I’m going to admit the evidence.” When the juvenile court asked counsel for Rafael if he had any objections to the admission of the transcripts and video recordings of the forensic interviews of Angela and Alexander, however, counsel replied, “No objection to that.”

The juvenile court stated counsel for Rafael “made a lot of sense with regards to what [Alexander] could see underneath the door,” but the court concluded “that doesn’t take away from the fact that . . . [Alexander] says he knows [Rafael] is in the room with [Angela], Elsa is not at the home and [Angela] is crying and . . . [Alexander] knows [Rafael] is in there doing something to [Angela].” The court acknowledged that Angela had “some kind of delay,” but the court found she was “very clear about the sex abuse by [Rafael].” The court rejected Rafael’s suggestion that Elsa had fabricated the sexual abuse allegations, explaining a child like Angela could not have “memorize[d] and repeat[ed] over and over again the same story without any substantial variance.”

The court found true the allegations Rafael sexually abused Angela and physically abused Elsa, sustained the petition under section 300, subdivisions a, b, d, and j, and declared Angela and Alexander dependents of the juvenile court. The court found it would be detrimental to return Angela and Alexander to Rafael, removed the children from him, and granted Elsa full legal and physical custody. The juvenile court terminated jurisdiction two days later.³ Rafael timely appealed.

DISCUSSION

Rafael argues substantial evidence did not support the jurisdiction findings that he sexually abused Angela and that he physically abused Elsa. Regarding the finding of sexual abuse, Rafael argues there was no substantial evidence because the Department did not show Angela was competent to testify as a witness, Alexander's account of the abuse was "implausible" and "logistically impossible," and the Department did not introduce any physical evidence of the abuse. Rafael also challenges the

³ The juvenile court's termination of jurisdiction does not moot Rafael's appeal because the court issued a custody order adverse to Rafael based on the jurisdiction finding. (See *In re J.K.* (2009) 174 Cal.App.4th 1426, 1431-1432 [even though the juvenile court terminated jurisdiction, the father's "challenge to the jurisdictional findings [was] not moot" because "the sustained jurisdictional findings against [him] have had an adverse effect on his custody rights"]; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [where the juvenile court issued restrictive visitation and custody orders based on the jurisdiction findings, "[t]he fact that the dependency action has been dismissed should not preclude review of a significant basis for the assertion of jurisdiction where exercise of that jurisdiction has resulted in orders which continue to adversely affect appellant"].)

disposition order, but only on the ground substantial evidence did not support the jurisdiction findings. Because we conclude substantial evidence supported the juvenile court's finding of sexual abuse under section 300, subdivision (d), we do not reach whether substantial evidence supported the findings under section 300, subdivisions (a) or (b).⁴ Raphael does not challenge the court's finding under section 300, subdivision (j).

A. *Applicable Law and Standard of Review*

"The Department has the burden of proving by a preponderance of the evidence that the children are dependents of the court under section 300." (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Section 300, subdivision (d), provides that a child comes within the juvenile court's jurisdiction if "[t]he child has been sexually abused, or there is a substantial risk that the child will

⁴ "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In re I.J.* (2013) 56 Cal.4th 766, 773; see *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 ["[a]s a general rule, a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings"].) Rafael's appeal is justiciable because the sustained sex abuse finding under section 300, subdivision (d), will prejudice Rafael and have an adverse effect on his custody rights regarding the children. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1431-1432.)

be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian” (See *In re D.C.* (2015) 243 Cal.App.4th 41, 51.) The definition of “sexual abuse” in Penal Code section 11165.1 includes “sexual assault,” which under Penal Code section 11165.1, subdivision (b)(4), includes “[t]he intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification.” (See *In re R.C.* (2011) 196 Cal.App.4th 741, 749, fn. 7.)

“We review the court’s jurisdictional findings for substantial evidence. “In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. ‘In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.’ [Citation.] ‘We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].””” [Citations.] “Substantial evidence is evidence that is ‘reasonable, credible, and of solid value’; such that a reasonable trier of fact could make such findings.” [Citations.] ‘The appellant has the burden of showing there is no evidence of

a sufficiently substantial nature to support the findings or order.” (*In re D.C.*, *supra*, 243 Cal.App.4th at pp. 51-52.)

B. *Substantial Evidence Supported the Juvenile Court’s Jurisdiction Finding Under Section 300, Subdivision (d)*

Angela told her mother, grandmother, two police officers, a forensic psychologist, and a social worker that Rafael touched and kissed her genitals and other intimate parts of her body, as defined by Penal Code section 11165.1. Written or oral reports from these six adults provided a consistent account of how Rafael sexually abused Angela multiple times. In addition, Alexander witnessed Rafael sexually abusing Angela, and his detailed accounts corroborated Angela’s statements. Finally, both Elsa and Daniel observed Angela acting out in a manner that mimicked how Rafael sexually abused her, and a psychologist found Angela exhibited “significant symptoms of PTSD” likely related to the sexual trauma.⁵ The juvenile court credited the

⁵ Rafael argues the psychologist’s assessment predated the Department’s allegation of sexual abuse and concerned only the reports of domestic violence between Rafael and Elsa. Not exactly. The psychologist wrote that Angela’s trauma included Rafael exposing Angela to pornography. The psychologist explained that the PTSD symptoms “include evidence of . . . re-experiencing of the traumatic event (e.g., reports of repeated engagement in sexual play and sexual acts such as humping)” Even though the psychologist conducted her assessment before the sexual abuse came to light, her assessment postdated the time period in which the abuse took place. The reports of sexual play supported the reasonable inference that Angela’s PTSD related to all forms of sexual trauma Rafael caused. (See *In re D.C.*, *supra*, 243 Cal.App.4th at p. 51 [““we draw all

substance of the statements by Angela and Alexander, and we have no authority or reason to disturb the juvenile court's credibility determination. (See *In re D.C.*, *supra*, 243 Cal.App.4th at pp. 51 [““issues of fact and credibility are the province of the trial court””]; *In re Jordan R.* (2012) 205 Cal.App.4th 111, 136 [“[t]o the extent the trial court's findings [under section 300, subdivision (d)] rest on an evaluation of credibility, the findings should be regarded as *conclusive* on appeal”].) Substantial evidence supported the juvenile court's jurisdiction finding under section 300, subdivision (d).

Nevertheless, Rafael makes several challenges to the sufficiency of the evidence supporting the juvenile court's jurisdiction finding. None of his contentions has merit.

Rafael contends the evidence supporting the juvenile court's finding “fell far short of the reasonable, credible, and of solid value standard for evidence sufficient to justify a finding of jurisdiction” because the Department did not qualify Angela as a witness. Rafael suggests the juvenile court erred in not sustaining his objections to the admission of Angela's statements in the Department's reports and in considering those statements in making its jurisdiction findings. But even if, as Rafael suggests, the juvenile court should not have considered Angela's statements in the Department's detention report, jurisdiction report, and Last Minute Information, there was still substantial evidence to support the jurisdiction finding because Rafael did not object to the admission of the transcript and video recording of Angela's forensic interview. In that interview, Angela stated Rafael touched her “booms” (her groin area) and her “butt.” Alexander's independent observation of Rafael touching and

reasonable inferences from the evidence to support the findings and orders of the dependency court””].)

kissing Angela's "private part," along with evidence Angela acted out in a sexual manner and displayed symptoms of PTSD, corroborated the statements in Angela's forensic interview. Thus, even without the summary of Angela's statements in the Department's reports, there was substantial evidence to support the jurisdiction finding that Rafael sexually abused Angela. (See *In re Clara B.* (1993) 20 Cal.App.4th 988, 1000 [""[w]hen reviewing a judgment based in part on excludable evidence, we first strip away the inadmissible evidence and ask whether enough admissible evidence remains to sustain the court's finding,""] and the court's "order must be upheld if there is any substantial evidence, contradicted, or uncontradicted, to support the judgment""].)

Rafael also argues Alexander's statements "made no sense," were "implausible," and were "logistically impossible to have been true." "To warrant rejection of the statements of a witness who has been believed by the trier of fact, it must be physically impossible for the statements to be true, or their falsity must be apparent without resorting to inferences or deductions." (*In re Jordan R.*, *supra*, 205 Cal.App.4th at p. 136.) The evidence did not show it was physically impossible for Alexander's statements to be true. Although Rafael's sister-in-law testified thick carpet covered the floor in the bedroom, and the juvenile court acknowledged Alexander may not have been able to see everything he claimed he saw, there was enough evidence for the juvenile court to find that Alexander saw enough to know that Rafael was sexually abusing Angela. (See *In re Z.G.* (2016) 5 Cal.App.5th 705, 720 [""we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact""].)

Finally, Rafael contends the evidence was insufficient to support the finding of sexual abuse because, “[m]ost significantly, there was no physical evidence of sexual abuse to Angela.” Rafael, however, cites no authority for the proposition that jurisdiction under section 300, subdivision (d), requires physical evidence of abuse. (See *In re Michael A.* (2012) 209 Cal.App.4th 661, 666 [“[w]e do not consider assertions made without supporting argument or authority”].) Moreover, the law did not require the Department to present physical evidence of abuse to corroborate Angela’s statements. (See *In re Lucero L.* (2000) 22 Cal.4th 1227, 1249 [“because section 355 specifically authorizes the admittance of and reliance on the hearsay statements of minors who are the subject of dependency proceedings without reference to corroboration, . . . corroboration is not necessary in this context”]; *In re Jordan R., supra*, 205 Cal.App.4th at p. 137 [the juvenile court could reasonably conclude “the lack of physical evidence was not determinative on the issue whether [the father] sexually abused” the child]; see also *In re D.C., supra*, 243 Cal.App.4th 41, 52 [the minor’s disclosures “are . . . substantial evidence of sexual abuse and sufficient to support the juvenile court’s jurisdictional finding”].)

DISPOSITION

The jurisdiction finding and disposition order are affirmed.

SEGAL, J.

We concur:

ZELON, Acting P. J.

FEUER, J.